Examined 5 March 17, 1881

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~508.~~ 226

ANTOINE DUBUCLET, PLAINTIFF IN ERROR,

vs.

THE STATE OF LOUISIANA, EX REL. JOHN C. MONCURE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 7, 1879.

SUPREME COURT OF THE UNITED STATES.

No. 508.

ANTOINE DUBUCLET, PLAINTIFF IN ERROR,

vs.

THE STATE OF LOUISIANA, EX REL. JOHN C. MONCURE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

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1 *Transcript from sixth district court for the parish of Orleans.—Filed May 16th, 1877.*

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

STATE OF LOUISIANA, EX REL. JNO. C. MONcure, *vs.* ANTOINE DUBUCLET. } No. 8227.

Petition.

STATE OF LOUISIANA:

Sixth district court for the parish of Orleans.

STATE OF LOUISIANA, EX REL. JNO. C. MONcure, *vs.* ANT. DUBUCLET. } No. 9250.

To the Hon. N. H. Rightor, judge of the sixth district court for the parish of Orleans:

The petition of the State of Louisiana, represented by H. N.
2 Ogden, attorney general of said State, upon the information of John C. Moncure, a resident of the city of Shreveport, in the parish of Caddo, joined with said State as plaintiff, herein respectfully represent:

That Antoine Debuclet, a resident of the city of New Orleans, in the parish of Orleans and State aforesaid, is now occupying and holding the office of treasurer of the State of Louisiana, having possession of the books, record, seal, and other appurtenances thereunto appertaining, and is collecting the salary derived therefrom; that said Antoine Dubuclet holds said office by virtue of and under color of a commission from the governor of the State of Louisiana, dated December 31st, 1874.

Petitioner alleges that said commission was issued to said Antoine Dubuclet in error, and that said Antoine Dubuclet illegally and improperly occupies said office, and exercises the functions and is collecting the salary thereof; that Jno. C. Moncure, one of the plaintiffs herein, is the duly elected treasurer of the State of Louisiana,
3 and is legally and properly entitled to said office, and to exercise the functions thereof, as well as to have full and complete custody of the records, seal, books, and all the appurtenances, and collect the salary, for the reasons and in consideration of the facts hereinafter specially set forth; that the plaintiff, Jno. C. Moncure, has an interest involved in this suit to the amount of four years' salary, twenty thousand dollars.

Petitioners aver that, in pursuance of the duly published proclamation of the governor of the State of Louisiana, an election was held in the State of Louisiana on the 2d day of November, 1874, whereat the plaintiff, Jno. C. Moncure, and the defendant, Antoine Dubuclet, were candidates for the said office, and that the said election was conducted in accordance with law, and at the close of the polls on the evening of

said day the ballots deposited by the suffragans of the State
4 showed, on actual count by the commissioners of election according to law, that Jno. C. Moncure had received for the office of State treasurer seventy-four thousand eight hundred and ninety-seven votes, and Antoine Dubuclet had received for the office of State treasurer seventy-one thousand and twenty-one votes, by which count it appeared that Jno. C. Moncure had received a majority of three thousand eight hundred and seventy six of the legal votes, and was thereby duly elected treasurer of the State of Louisiana; that the various commissioners of election thereupon made out and certified their respective statements showing the results at the various polls, according to law, which, aggregated, showed the aforesaid general result, and forwarded the same to the different supervisors and assistant supervisors of registration, in order that they might be compiled by wards and parishes, according to law; and they, in turn, compiled the same and forwarded the parish and ward returns, with a few exceptions,
5 hereinafter specially set forth, to the returning board, composed of J. Madison Wells, Thos. C. Anderson, Louis M. Kenner, G. Casanave, and whereof J. Madison Wells was president, constituted under the laws of the State, to be by them compiled for the State at large; whereupon said board did assemble at New Orleans on November 11th, 1874, and proceed to canvass and compile the same. That the supervisor of the parish of De Soto did fraudulently, and for the purpose of defeating the will of the majority of the voters of said parish, as expressed at said election, fail to forward the statements of the commissioners of the various polls of said parish, together with the compilation thereof; and the plaintiff herein, Jno. C. Moncure, did, through his attorneys, cause the district clerk of said parish to appear before said returning board with the duplicate original of said statements provided for by law, whereby it was shown that said plaintiff, Jno. C. Moncure, did receive one thousand and forty-three majority of said votes; but said returning board refused to, and in fact
6 did not, count said majority for said petitioner, although said plaintiff's attorneys did frequently protest against said action and urged plaintiff's rights in the matter; that the supervisor of the parish of Terrebonne did fail to compile and forward the returns of poll three, eight, ten, and eleven of said parish, because the statements of votes and tally sheets of said polls were by the commissioners of said polls deposited, by reason of error, in the ballot-boxes, which were lodged with the clerk of the district court of said parish; and that plaintiff's attorneys did procure an order of court whereby said returns were forwarded and received by said returning board, whereby it appeared, together with the polls already returned, that the votes stood sixteen hundred and seven for Antoine Debuclet, and thirteen hundred and sixty-one for Jno. C. Moncure, but that said returning board refused, in violation of law, to count the said returns from said polls, whereby Jno. C. Moncure (plaintiff) was improperly de-
7 prived on said count of thirty-one votes in said parish to which he was entitled by law; that in the parish of Carroll, although plaintiff's attorneys conclusively showed that the returns before said board were forged and altered, and nowise showed the correct statement of votes cast in said parish, and should have been rejected in toto, said board did proceed to count and promulgate the same, whereby twenty-two hundred and two votes were counted for Antoine Dubuclet and two hundred and thirty-four were counted for Jno. C. Moncure, whereas the whole vote should have been rejected; that in the parish of Bien-

ville, De Soto, Grant and Winn, said returning board, contrary to law, refused to count any returns at all from said parishes, altho' in possession of the same, and in the promulgation of the result in the State omitted therefrom the returns from said parishes, which last showed in the aggregate of the four parishes twenty-eight hundred and forty-
8 seven votes for Jno. C. Moncure, and six hundred and sixty-seven votes for Antoine Dubuclet, by which illegal action plaintiff, Jno. C. Moncure, was improperly deprived of twenty-one hundred and eighty majority, to which he was entitled, and which should have been counted for him; that said returning board did, on various frivolous pretexts, reject the returns from the following polls of various parishes, which showed the following results:

Assumption, poll 4: Thrown out 158 for Moncure; 51 for Dubuclet.

Caddo, poll 1, 2, 3, 4, 5, 11, 12, 13: 944 for Moncure, 227 for Dubuclet.

Jackson, poll 4: 273 for Moncure; 52 for Dubuclet.

Lincoln, polls 3, 4 & 7: 345 votes for Moncure, and 25 votes for Dubuclet.

Natchitoches, polls 5 & 6: 295 votes for Moncure, and 3 votes for Dubuclet.

Rapides, six polls: 557 votes for Moncure, and 89 votes for Dubuclet.

Red River, poll 3: 119 votes for Moncure, and 43 votes for Dubuclet.

Sabine, poll 3: 79 votes for Moncure, and none for Dubuclet.

9 Iberia, poll 1: 308 votes for Moncure. and 154 for Dubuclet.

St. Tammany, poll 3: 40 votes for Moncure, and nothing for Dubuclet.

Total amount of votes thrown out: Moncure 3,118; Dubuclet 644.

That at the Evergreen poll, in parish of Avoyelles, when the, ballot-box was stolen, and there was only a partial return, showing Dubuclet's majority to be 8 votes, said returning board arbitrarily returned said Dubuclet's majority to be one hundred and fifty, whereby said Jno. C. Moncure was improperly damaged to the amount of one hundred and forty votes; that all of the said illegal and improper action of said board, plaintiff, Jno. C. Moncure, through his attorneys, repeatedly protested verbally and in writing, but to no effect; that the result of the improper and illegal action of said returning board in altering and rejecting the returns from said polls and parishes aforesaid was to deprive plaintiff, Jno. C. Moncure, of twenty-four hundred and forty-six majority, which should have been counted for said Jno. C. Moncure.

Petitioner further alleges that said returning board in their said
10 action pretended to be acting under the authority of the provisions of act No. , but that said board acted illegally and improperly, and in direct contradiction of said law in receiving and entertaining objections and protests not entered according to the provisions of said acts; that in entertaining and acting on said protests and objections said returning board proceeded in violation of law both in the order, in which they pretended to investigate said protests, and in the manner in which they conducted the examination; and finally that the whole of said proceedings, said returning board exercised and pretended to exercise judicial powers under the provisions of said act, and in violation of art. of the constitution of the State of Louisiana, which provides that no judicial power shall be vested or exercised by bodies or persons, other than the courts; that the result of said illegal, arbitrary, and unconstitutional action of said returning board was that they falsely returned and promulgated said Antoine Dubuclet as having
11 received nine hundred and fifty-eight majority of legal votes of the suffragans of the State of Louisiana for the office of treasurer

of the State when the fact was and is that the plaintiff, Jno C. Moncure did receive three thousand eight hundred and seventy-six majority of said votes, and was and is now entitled to be declared, promulgated, commissioned, and inducted into office on qualifying according to law as the treasurer of the State.

Wherefore, the premises being considered, plaintiffs pray that said Antoine Dubuclet be served with a copy of the petition, and be summoned to answer the demand contained therein, and that a trial be had upon the matters, facts and issues set forth herein, and that after due proceedings had, there be judgment decreeing that said commission issued improvidently to said Dubuclet as treasurer, and that he improperly and illegally holds said office, and exercises the functions thereof, and that there be judgment decreeing that Jno. C. Moncure received a majority of three thousand eight hundred and seventy-six of the legal
12 votes of the State of Louisiana, at said election for treasurer, and is therefore entitled to be commmissioned as such on qualifying by oath and bond as the law directs, and that said Dubuclet be ordered to deliver up said office, together with all the books, records, seal, furniture and other appurtenances thereunto belonging unto said plaintiff, Jno. C. Moncure, on his proper qualification according to law, and to account to said Jno. C. Moncure for the amount of salary drawn by said Dubuclet up to the time of said delivery from December 31st, 1874, together with legal interest thereon until paid, and for all equitable, and necessary relief, &c., and for costs, as in duty bound.

(Signed) H. N. OGDEN,
Att'y Gen'l.

(do.) F. C. ZACHARIE,
Of Counsel.

(Signed) JOS. TAYLOR.
W. R. MURPHY.
F. X. BARBOT.
M. C. BARRY.
A. G. SPARKS.
FRANK P. STUBBS.
S. MARX.
G. H. ELLIS.
HARDY RICHARDSON.
13 WM. J. KELLY.
JULES DUPUY.
MINOR KENNER.
EDW'D DURIVE, JR.
V. FLOTTE.
F. DUDENHEFER.
LOUIS TEXADA.
H. C. MITCHELL.
THOMAS S. HARDEE.
R. BREWSTER.
HENRY L. GARLAND.

Filed March 20th, 1877.

H. J. DUSSOR, *D'y Clk.*

Citation.

STATE OF LOUISIANA:

Sixth district court for the parish of Orleans, in the city of New Orleans.

STATE OF LOUISIANA, EX REL. JOHN C. MONcure,
vs.
ANT. DUBUCLET.
} No. 9250.

Mr. ANTOINE DUBUCLET,
New Orleans:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your

answer to the same in the office of the clerk of the sixth district court for the parish of Orleans within ten days after the service thereof.

Witness the honorable N. H. Rightor, judge of the said court, this 20th day of March, in the year of our Lord 1877.

[SEAL.] (Signed) H. MIESTER,
Deputy Clerk.

Return to citation.

14 Received March 20, 1877, and on the 20th day of March, 1877, served a copy of citation and petition on the defendant herein, Antoine Dubuclet, in person at his domicile on Canal st., between Liberty and Howard or Marais.

(Signed) E. J. LAWLESS,
D'y Sh'ff.

Answer and petition to remove case to U. S. circuit court.

To the honorable the judges of the sixth judicial district court in and for the parish of Orleans, in the State of Louisiana.

The petition of Antoine Dubuclet, resident of said parish and State, respectfully represents unto your honorable court that suit has been instituted against him before your honorable court, by the State of Louisiana, on the information of Jno. C. Moncure, said suit being entitled State of La., ex rel. Jno. C. Moncure, vs. Ant. Dubuclet, and numbered on the docket 9250, by which your petitioner's election to the office of treasurer of the State of Louisiana, at the election held on
15 the day of November, A. D. 1874; is contested, relators averring in substance that at the your petitioner was returned by the returning officers of election for the State of Louisiana, as having obtained a majority of the legal votes cast at that election and that he had been duly commissioned and in the discharge of the duties of his said office since about the 31st of December, A. D. 1874, that he was not elected, but that said relator, John C. Moncure, received a majority of the votes cast at the polls and was therefore elected, and praying the court to so decree. All of which will more fully appear by reference to the petition in said case, which is made a part of this petition.

Petitioner represents that he is a colored man; that by the amendments to the Constitution of the United States, and by the constitution of the State of Louisiana, he is entitled to the election franchise, and to be elected and hold office, and to all the civil rights enjoyed by any
16 citizen of the United States, or of the State, and that by the acts of Congress and of the State legislature, he is specially protected in those rights.

Petitioner further represents that by the amendments to the Constitution, and by the laws of the United States, that all citizens of the United States who are otherwise qualified by law to vote at any election by the people of any State shall be allowed to vote at all elections without distinction of race, color, or previous condition of servitude.

Petitioner further represents that, at the election held in this State on the day of November, A. D. 1874, for State treasurer, at which petitioner was a candidate, that in the parishes of De Soto, Bienville, Union, Grant, and other parishes of the State, there were more than five thousand citizens of color of the State of Louisiana and of the United States qualified by law to vote at said election, and who offered to vote, and if they had been permitted to vote would have voted for

petitioner, and against Jno. C. Moncure, relator, and who were
17 prevented, hindered, and controlled and intimidated from voting for petitioner by relator Moncure and those acting in his interest, by means of bribery, threats of depriving them of employment and occupation, and of ejecting them from rented houses, lands, and other property, and by threats of refusing to renew leases or contracts for labor, and by threats of violence to them or their families, in violation of their and your petitioner's civil rights, and in violation of the laws of the United States, made and enacted to protect the civil rights of citizens of color and previous condition of servitude.

Petitioner further represents that, in consequence of said illegal acts and violation of the laws of the State of Louisiana and of the United States, by relator Moncure, and those acting in his interest, at and before said election, and for the purpose of defeating your petitioner for treasurer of the State of Louisiana, that the returning officers of election of the State of Louisiana, in accordance to law and their sworn duty, duly returned your petitioner elected, by rejecting the
18 votes cast in the several parishes and at the several polls where relators, in their petition, complain the vote should have been counted in his, Moncure's, favor, and where they complain the vote should not have been counted in favor of petitioner.

Petitioner further represents that the suit of relators is for the object and purpose of depriving your petitioner of the office of treasurer of the State of Louisiana, by reason of the denial of the aforesaid citizens the right to vote on account of race, color, and previous condition of servitude, in violation of the laws of the United States made to protect the equal civil rights of petitioner and those offering to vote for him, and by reason of the right guaranteed by the fifteenth article of amendment to the Constitution of the United States.

Petitioner further represents that in the suit of relators against him, No. 9250, on the docket of your said court that he cannot enforce in the judicial tribunals of the part of the State in which said suit is
19 instituted, and particularly in the sixth district court of the parish of Orleans, the right secured to him by law to hold, retain, exercise, and receive the emoluments of the office of treasurer of the State of Louisiana, which is guaranteed to him, a man of color, as a civil right, by the laws of the State of Louisiana and of the United States.

Petitioner further represents that the contest in said suit No. 9250 turns and depends entirely on the question of the right of the relator, Moncure, and those acting in his interest, to prevent petitioner's supporters from voting for him, in violation of the laws of the United States and in violation of the equal civil rights of petitioner and of his supporters, as above set forth in this petition.

Wherefore petitioner files this his petition in this honorable court, with his affidavit verifying the facts stated in this petition, removing said case No. 9250, entitled the State of Louisiana, ex rel. John C. Moncure, vs. Antoine Dubuclet, for trial into the next circuit court of the
20 United States to be held in the district where said suit No. 9250 is pending.

Petitioner further represents, that by filing this petition that he does not intend, and does not hereby waive any right he may have to file any exception, plea, or answer to said suit No. 9250.

Petitioner prays, that upon filing this petition, that all further proceedings in this court shall cease, as required by law.

(Signed) JOHN RAY,
Att'y for Dubuclet.

Affidavit.

STATE OF LOUISIANA,
Parish of Orleans:

Personally came and appeared before me, the undersigned authority, Antoine Dubuclet, petitioner in the within petition, who makes oath that the facts stated in the within petition are true to the best of his knowledge and belief.

(Signed) ANT. DUBUCLET.

Signed and sworn to before me on this 2d day of April, A. D. 1877.

(Signed) A. L. TISSOT,

21 *Judge of the Second District Court for the Parish of Orleans.*

Filed Ap'l 2d, 1877.

PHILLIP POWER, JR.,
D'y Clk.

Rule to transfer case to U. S. circuit court.

STATE OF LOUISIANA:

Sixth district court for the parish for Orleans, Monday, the 9th day of April, 1877.

Present, the honorable Nicholas H. Rightor, judge.

STATE OF LOUISIANA, EX REL. JNO. C. MONCURE,
vs.
ANTOINE DUBUCLET. } No. 9250.

Defendant, by his attorney, Jno. Ray, appears in this honorable court and represents that on the second day of April, 1877, he filed a petition in this case and in this court transferring the above entitled case to the circuit court of the United States for the 5th circuit and district of Louisiana.

It is ordered that the above entitled case be transferred to the
22 circuit court of the United States for the 5th circuit and district of Louisiana in accordance to law, and that the clerk of this court furnish the defendant in this case with copies of said process against him and all other pleadings in this case, upon the defendant tendering the amount of the legal fees therefor.

It is further ordered that relator show cause on Tuesday, the 17th (seventeenth) of April, 1877, at 11 o'clock a. m., why this rule should not be made absolute.

Extract from the minutes.

[SEAL.] (Signed) H. MIESTER, *D'y Clk.*

Sheriff's return on rule.

Received, April 10th, 1877, and on the sixteenth day of April, 1877, at 11.30 a. m., I served a copy of within rule on J. C. Moncure, through his att'y, F. C. Zacharie, in person.

Returned same day.

M. DRISCOLL, *D'y Sh'ff.*

23 *Petition to remove case to U. S. circuit court.*

Sixth district court.

STATE OF LOUISIANA, EX REL. JNO. C. MONCURE,
vs.
ANTOINE DUBUCLET. } No. 9250.

For petition see page , No. 13.

Sheriff's return on petition to remove case to U. S. circuit court.

Received, April 4th, 1877, and on the same day, month, and year I served a copy of the within petition to remove case to the U. S. circuit court on H. N. Ogden, esq., in person.
Returned Ap'l 5, 1877.
Sh'ff's fees, $1.50.
(Signed) H. C. THOMAS, *D'y Sh'ff.*

And on the fifth day of April, 1877, I served a copy of the within petition to remove case to the U. S. circuit court on Frank C. Zacharie, esq., herein named, in person.
Returned same day.
Sh'ff's fees, $1.50.
(Signed) H. C. THOMAS,
24 *Deputy Sheriff.*

Extract from minutes, April 17, 1877.

STATE OF LOUISIANA, EX REL. JNO. C. MONCURE,
vs.
ANTOINE DUBUCLET.

This rule was ordered to be continued to Wednesday, 25 April, 1877, at 10 o'clock a. m.

Extract from minutes, April 25, 1877.

STATE OF LOUISIANA, EX REL. JNO. C. MONCURE,
vs.
ANTOINE DUBUCLET.

This rule was ordered continued to Wednesday, May the 2d, 1877, at 11 o'clock a. m.

Extract from minutes, May the 2*d*, 1877.—*Rule nisi absolute.*

STATE OF LOUISIANA, EX REL. JNO. C. MONCURE,
vs.
ANT. DUBUCLET.

In the matter of the rule nisi herein taken the court, considering the answer and consent of defendant in rule this day filed, it is
25 this day ordered that rule be made absolute and according, that this case be removed to the circuit court of the United States for the district of Louisiana, on defendant in suit giving bond and security as by law directed.

Answer and consent.

STATE OF LOUISIANA, EX REL. JNO. C. MONCURE,
vs.
ANTOINE DUBUCLET.

Now comes F. C. Zacharie, of counsel representing relator, J. C. Moncure, in rule transferring said cause to U. S. circuit court, fixed for this day, and for answer to demand of plaintiff in rule, consent to the same, reserving all rights of proper objection before said U. S. circuit court, provided that plaintiff in rule furnish a proper bond, &c.

Judgment—On rule nisi.

In the matter of the rule nisi herein taken, the court considering
26 the answer and consent of defendant in rule this day filed, it is ordered that said rule be made absolute, and accordingly that this case be removed to United States circuit court for the district of Louisiana according to law.

Judgment rendered May 12th, 1878.
Judgment signed May 14th, 1878.

N. H. RIGHTOR, *Judge.*

Clerk's certificate.

I, J. V. Guillotte, clerk of the sixth district court for the parish of Orleans, duly commissioned and sworn, do hereby certify that the above and foregoing twenty-nine pages do contain a full, true, and correct transcript of all proceedings had and documents filed in the case wherein the State of Louisiana ex rel. Jno. C. Moncure are the plaintiffs, and Antoine Dubuclet defendant, No. 9250 of the docket of this court.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court this 14th day of May, A. D. 1877, and of the Independence of the United States the 101st.

[SEAL.] J. V. GUILLOTTE, *Clerk.*

27 *Judge's certificate attesting to clerk's signature.*

I, N. H. Rightor, judge of the sixth district court for the parish of Orleans, do hereby certify that J. V. Guillotte is the clerk of said court, that the same is a court of competent and lawful jurisdiction, and that the signature J. V. Guillotte, clerk, to the foregoing certificate is in the proper handwriting of him, the said J. V. Guillotte, clerk; to his official acts as such full faith and credit are due and owing, and I do further certify that his attestation is in due form of law.

Given under my hand, at the city of New Orleans, on the fourteenth day of May, A. D. 1877.

N. H. RIGHTOR, *Judge.*

Clerk's certificate attesting to the judge's signature.

I, J. V. Guillotte, clerk of the sixth district court for the parish of Orleans, do hereby certify that N. H. Rightor, whose genuine signature appears to the foregoing certificate, is now, and was at the time
28 of signing the same, sole judge of the sixth district court for the parish of Orleans, duly appointed, and commissioned and qualified as such, and that the said attestation is in due form of law.

Witness my hand and the seal of said court this 14th day of May, A. D. 1877.

[SEAL.] J. V. GUILLOTTE, *Clerk.*

23 *Petition to remove case to U. S. circuit court.*

Sixth district court.

STATE OF LOUISIANA, EX REL. JNO. C. MONCURE,
vs.
ANTOINE DUBUCLET. } No. 9250.

For petition see page , No. 13.

Sheriff's return on petition to remove case to U. S. circuit court.

Received, April 4th, 1877, and on the same day, month, and year I served a copy of the within petition to remove case to the U. S. circuit court on H. N. Ogden, esq., in person.
Returned Ap'l 5, 1877.
Sh'ff's fees, $1.50.
(Signed) H. C. THOMAS, *D'y Sh'ff.*

And on the fifth day of April, 1877, I served a copy of the within petition to remove case to the U. S. circuit court on Frank C. Zacharie, esq., herein named, in person.
Returned same day.
Sh'ff's fees, $1.50.
(Signed) H. C. THOMAS,
24 *Deputy Sheriff.*

Extract from minutes, April 17, 1877.

STATE OF LOUISIANA, EX REL. JNO. C. MONCURE,
vs.
ANTOINE DUBUCLET.

This rule was ordered to be continued to Wednesday, 25 April, 1877, at 10 o'clock a. m.

Extract from minutes, April 25, 1877.

STATE OF LOUISIANA, EX REL. JNO. C. MONCURE,
vs.
ANTOINE DUBUCLET.

This rule was ordered continued to Wednesday, May the 2d, 1877, at 11 o'clock a. m.

Extract from minutes, May the 2d, 1877.—Rule nisi absolute.

STATE OF LOUISIANA, EX REL. JNO. C. MONCURE,
vs.
ANT. DUBUCLET.

In the matter of the rule nisi herein taken the court, considering the answer and consent of defendant in rule this day filed, it is
25 this day ordered that rule be made absolute and according, that this case be removed to the circuit court of the United States for the district of Louisiana, on defendant in suit giving bond and security as by law directed.

Answer and consent.

STATE OF LOUISIANA, EX REL. JNO. C. MONCURE,
vs.
ANTOINE DUBUCLET.

Now comes F. C. Zacharie, of counsel representing relator, J. C. Moncure, in rule transferring said cause to U. S. circuit court, fixed for this day, and for answer to demand of plaintiff in rule, consent to the same, reserving all rights of proper objection before said U. S. circuit court, provided that plaintiff in rule furnish a proper bond, &c.

Judgment—On rule nisi.

In the matter of the rule nisi herein taken, the court considering
26 the answer and consent of defendant in rule this day filed, it is ordered that said rule be made absolute, and accordingly that this case be removed to United States circuit court for the district of Louisiana according to law.

Judgment rendered May 12th, 1878.

Judgment signed May 14th, 1878.

N. H. RIGHTOR, *Judge.*

Clerk's certificate.

I, J. V. Guillotte, clerk of the sixth district court for the parish of Orleans, duly commissioned and sworn, do hereby certify that the above and foregoing twenty-nine pages do contain a full, true, and correct transcript of all proceedings had and documents filed in the case wherein the State of Louisiana ex rel. Jno. C. Moncure are the plaintiffs, and Antoine Dubuclet defendant, No. 9250 of the docket of this court.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court this 14th day of May, A. D. 1877, and of the Independence of the United States the 101st.

[SEAL.] J. V. GUILLOTTE, *Clerk.*

27 *Judge's certificate attesting to clerk's signature.*

I, N. H. Rightor, judge of the sixth district court for the parish of Orleans, do hereby certify that J. V. Guillotte is the clerk of said court, that the same is a court of competent and lawful jurisdiction, and that the signature J. V. Guillotte, clerk, to the foregoing certificate is in the proper handwriting of him, the said J. V. Guillotte, clerk; to his official acts as such full faith and credit are due and owing, and I do further certify that his attestation is in due form of law.

Given under my hand, at the city of New Orleans, on the fourteenth day of May, A. D. 1877.

N. H. RIGHTOR, *Judge.*

Clerk's certificate attesting to the judge's signature.

I, J. V. Guillotte, clerk of the sixth district court for the parish of Orleans, do hereby certify that N. H. Rightor, whose genuine signature appears to the foregoing certificate, is now, and was at the time
28 of signing the same, sole judge of the sixth district court for the parish of Orleans, duly appointed, and commissioned and qualified as such, and that the said attestation is in due form of law.

Witness my hand and the seal of said court this 14th day of May, A. D. 1877.

[SEAL.] J. V. GUILLOTTE, *Clerk.*

Exception to the jurisdiction of the court.—Filed December 18th, 1877.

U. S. circuit court.

STATE OF LOUISIANA, EX REL. J. C. MONCURE, *vs.* ANTOINE DUBUCLET. } No. 8227.

Now comes the plaintiffs in the above entitled cause, and asks leave of this court to file this exception.

Plaintiffs allege that this court has no jurisdiction in the above entitled cause—

1st. Because this is a suit between the State of Louisiana and one of its citizens on the one hand, and another citizen on the other, involving no conflict of law between the State and the United States, and to be determined alone by the laws of Louisiana.

2d. Plaintiffs further allege that there is nothing in the petition of plaintiffs showing that any rights conferred by the thirteenth, fourteenth, or fifteenth constitutional amendments have been abridged by any laws of the State of Louisiana or the United States.

30 3d. The act of Congress passed to enforce the provisions of these amendments only applies to cases where the States have passed some law or laws abridging the right of suffrage conferred on the colored citizen on account of race, color, or previous condition of servitude.

4th. Plaintiffs allege that the State of Louisiana have passed no laws in conflict with any provision of the Constitution of the United States, and that the act of Congress only applies when there is a conflict between the paramount law and the State law.

5th. Plaintiffs allege that the people of color have all the rights in Louisiana under her laws that her other citizens have.

6th. The United States courts have no jurisdiction conferred on them by act of Congress commonly known as the civil rights bill, except where the sole question arising under the contest for title in the deprivation of citizens of the right to vote (by the State), having offered to vote, on account of their race, color, or previous condition.

31 Wherefore, the premises being considered, plaintiffs pray that these exceptions be sustained and this suit be ordered to be transferred to the 6th dist. court for the parish of Orleans, State of Louisiana, from which court this case is sought to be transferred.

(Signed) F. C. ZACHARIE,
(do.) B. F. JONAS,
Of Counsel.

Submission of exception.—Extract from the minutes, November term, 1877.

NEW ORLEANS, *Saturday, December 22d*, 1877.

Court met pursuant to adjournment. Present, Hon. Edward C. Billings, district judge.

STATE OF LOUISIANA, EX REL. J. C. MONCURE, *vs.* A. DUBUCLET. } No. 8227.

The exception herein was called for trial—B. F. Jonas for exceptor,

John Ray for Dubuclet—and after hearing argument the court took time to advise, and requested counsel to furnish briefs within one week.

32 *Order.—Case to be remanded to the State court.—Extract from the minutes of January 2d*, 1878.

J. C. MONCURE
vs.
A. DUBUCLET. } No. 8227.

The application to remand cause came on to be heard and was argued by counsel.

On consideration whereof, it is ordered that the application be granted and the cause remanded to the State court from whence it came.

Motion and order for writ of error.—Extract from the minutes of January 5th, 1878.

THE STATE OF LOUISIANA, EX REL. JOHN C. Moncure,
vs.
ANTOINE DUBUCLET. } No. 8227.

Defendant in the above-entitled suit, by his counsel, J. & C. B. Ray, appeared in open court and suggested to the court that he is aggrieved by the decision of this hon. court ordering the above-entitled suit
33 to be remanded to the sixth district court of the parish of Orleans, from which it was removed to this honorable court, and moves this honorable court to grant him a writ of error from said decision to the Supreme Court of the United States to operate as a supersedeas:

Whereupon it is ordered that a writ of error to the Supreme Court of the United States, from the decision of the circuit court of the United States, remanding the above-entitled case to the hon. the sixth district court of the parish of Orleans, from which it was removed, be granted Antoine Dubuclet, defendant in said suit, and that the same operate as a supersedeas upon his executing his bond, with good and sufficient security, in the sum of , conditioned according to law, and that said writ of error be made returnable to the Supreme Court on the second Monday of October, A. D. 1878, next.

Rule.—Extract from the minutes of January 5th, 1878.

34 THE STATE OF LOUISIANA, EX REL. J. C. Moncure,
vs.
ANT. DUBUCLET. } No. 8227

On motion of J. & C. B. Ray, of counsel for defendant, ordered that plaintiff show cause on 7th instant, at 11 o'clock a. m., why the bond for a writ of error herein to operate as a supersedeas, to be fixed by the court, should not be approved.

Order fixing amount of bond.—Extract from the minutes of January 7th, 1878.

STATE OF LOUISIANA, EX REL. JNO C. MONCURE, *vs.* ANT. DUBUCLET. } No. 8227.

The rule taken by defendant on 5th instant, to fix amount of bond, came on to be heard—John Ray appearing for mover; B. F. Jonas and F. C. Zacharie for defendant not present—and after hearing counsel, it is ordered that the bond for writ of error to operate as a super-
35 sedeas in this cause be fixed at five thousand dollars.

Bond for writ of error.—Filed January 12th, 1878.

Know all men by these presents that we, Antoine Dubuclet, as principal, and Philip Felix Herwig, Joseph Auguste Raynal, and Auguste D. Dubuclet and Antoinette Riard as sureties, are held and firmly bound unto the State of Louisiana on the relation of John C. Moncure, in the full and just sum of five thousand dollars, to be paid to the State of Louisiana on the relation of John C. Moncure, certain attorney, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our heirs, and administrators, jointly and severally by these presents, sealed with our seals, and dated this day of January, in the year of our Lord one thousand eight hundred and seventy-eight.

Whereas lately at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a
36 suit depending in said circuit court, wherein the State of Louisiana on the relation of John C. Moncure, plaintiff, and Antoine Dubuclet, judgment was rendered against the said Antoine Dubuclet, defendant, and the said Antoine Dubuclet having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Louisiana on the relation of John C. Moncure, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next, 1878:

Now, the condition of the above obligation is such, that if the said Antoine Dubuclet shall prosecute his writ to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed)	ANT. DUBUCLET.	[L. S.]
(Do.)	P. F. HERWIG.	[L. S.]
(Do.)	A. D. DUBUCLET.	[L. S.]
(Do.)	ANTOINETTE RIARD.	[L. S.]

37 Sealed and delivered in the presence of—
(Signed) F. B. VINOT.
(Do.) F. A. RAYNAL. [L. S.]

DISTRICT OF LOUISIANA, *ss:*

Phillip Felix Herwig, surety on the within bond, being duly sworn, says that he resides in the city of New Orleans, Louisiana; that he is worth the sum of two thousand dollars over and above his debts and liabilities and property exempt from execution.

(Signed) F. HERWIG.

Subscribed and sworn before me this 11th day of January, 1878.
(Signed) F. B. VINOT,
U. S. Comm'r.

DISTRICT OF LOUISIANA, *ss*:

Joseph Auguste Raynal, surety on the within bond, being duly sworn, says that he resides in the city of New Orleans, Louisiana; that he is worth the sum of one thousand dollars ($1,000) over and above his debts and liabilities and property exempt from execution.

(Signed) J. A. RAYNAL.

38 Subscribed and sworn before me this 12th day of January, 1878.
(Signed) F. B. VINOT,
U. S. Comm'r.

DISTRICT OF LOUISIANA, *ss*:

August D. Dubuclet, surety on the within bond, being duly sworn, says that he resides in the city of New Orleans, Louisiana; that he is worth the sum of one thousand dollars over and above his debts and liabilities and property exempt from execution.

(Signed) A. D. DUBUCLET.

Subscribed and sworn before me this 12th day of January, 1878.
(Signed) F. B. VINOT,
U. S Comm'r.

DISTRICT OF LOUISIANA, *ss*:

Antoinette Riard, surety on the within bond, being duly sworn, says that she resides in the city of New Orleans, Louisiana; that she is worth the sum of one thousand dollars over and above her debts and liabilities and property exempt from execution.

(Signed) ANTOINETTE RIARD.

Subscribed and sworn before me this 12th day of January, 1878.
(Signed) F. B. VINOT,
U. S. Comm'r.

39 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit, and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 38 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had in the case of The State of Louisiana ex rel. John C. Moncure versus Antoine Dubuclet, No. 8227 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 6th day of July, A. D. 1878.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Edward C. Billings, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the

fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 6th day of July, A. D. 1878.

EDWARD C. BILLINGS, *Judge.*

40 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between the State of Louisiana, ex rel. John C. Moncure, and Antoine Dubuclet, a manifest error hath happened, to the great damage of the said Antoine Dubuclet, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings afor said being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 9th day of January, in the year of our Lord one thousand eight hundred and seventy-eight.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court
for the District of Louisiana.

(Indorsed:) United States circuit court. No. 8227. Antoine Dubuclet, plaintiff in error, versus The State of Louisiana, ex rel. John C. Moncure, defendant in error. Writ of error. Filed January 9th, 1878. F. B. Vinot, d'y cl'k.

41 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to the State of Louisiana, ex rel. John C. Moncure, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Antoine Dubuclet is plaintiff in error and the State of Louisiana, ex rel. John C. Moncure, are defendants in error, to show cause, if any there be, why the judgment remanding the cause to the sixth district court for the parish of Orleans, as in said

writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 14th day of January, in the year of our Lord one thousand eight hundred and seventy-eight.

EDWARD C. BILLINGS, *Judge.*

42 (Indorsed:) United States circuit court. No. 8227. Antoine Dubuclet, plaintiff in error, vs. The State of Louisiana, ex rel. John C. Moncure, defendants in error. Citation.

Marshal's return.

Received Jan. 15, 1878, by the U. S. marshal, an' on the 18th day of the same month and year, served a true copy of the within citation in error on the attorney-general of the State of Louisiana, Hon. H. N. Ogden, by handing the same to him, the said H. N. Ogden, in person in the city of New Orleans.

W. G. ELLIOTT,
D'y U. S. Marshal.

On this 16th day of February, 1878, personally appeared before me William G. Elliott, a deputy U. S. marshal for the district of Louisiana, and makes oath that he served a copy of the within citation on the Hon. H. N. Ogden, attorney-general of the State of Louisiana, as stated in his official return hereon.

W. G. ELLIOTT,
D'y U. S. Marshal.

Sworn to and subscribed before me this 16th day of February, 1878.

F. B. VINOT,
U. S. Comm'r.

43 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to the State of Louisiana, ex rel. John C. Moncure, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Antoine Dubuclet is plaintiff in error, and the State of Louisiana, ex rel. John C. Moncure, are defendants in error, to show cause, if any there be, why the judgment remanding the cause to the sixth district court of the parish of Orleans, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 14th day of January, in the year of our Lord one thousand eight hundred and seventy-eight.

EDWARD C. BILLINGS, *Judge.*

44 (Indorsed:) United States circuit court. No. 8227. Antoine Dubuclet, plaintiff in error, vs. The State of Louisiana, ex rel. John C. Moncure, defendants in error. Citation.

Marshal's return.

Received Jan. 15, 1878, by the U. S. marshal, and on the 11th day March, 1878, served a true copy of the within citation on John C. M cure, personally, in the city of Shreveport, Louisiana, a distance seven hundred & five miles from the city of New Orleans.

CHARLES A. DEWING,
D'p'ty U. S. Marshal

On the 11th day of March, A. D. 1878, personally appeared fore me, Charles A. Dewing, a deputy U. S. marshal for the district Louisiana, and makes oath that he served a copy of the within citat on John C. Moncure, as stated in his official return hereon.

CHARLES A. DEWING,
D'p'ty U. S. Marshal

Sworn to & subscribed before me, this 11th day of March, A. D. 18

[SEAL.] GEO. W. KENDALL,
Com'r U. S. Circuit Court, Dist. of La

(Indorsement on cover:) No. 508. Antoine Dubuclet, plaintiff error, vs. The State of Louisiana, ex rel. John C. Moncure. Louisia C. C. U. S. Filed 7th October, 1878.

DEC 2 1850

Supreme Court of the United States.

No. 226.

ANTOINE DUBUCLET, PLAINTIFF IN ERROR,

versus

THE STATE OF LOUISIANA, EX REL.
JOHN C. MONCURE, DEFENDANT IN ERROR.

JOHN RAY,
Of Counsel for Plaintiff in Error.

James A. Gresham, Print, 38 Camp Street.

Supreme Court of the United States.

No. 226.

ANTOINE DUBUCLET, PLAINTIFF IN ERROR,

versus

THE STATE OF LOUISIANA, EX REL.
JOHN C. MONCURE, DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

The facts of this case, material to the issue before the Court, are:

That *Antoine Dubuclet* and *John C. Moncure* were the opposing candidates for the office of Treasurer of the State of Louisiana, at the election held on the first Monday of November, 1874.

That the returning officers of said election returned Dubuclet elected, and he was commissioned by the Governor and entered upon the duties of his office on the 31st December, 1874.

This suit was commenced in the 6th District Court for the Parish of Orleans, La., on the 20th of March, 1877, two years and four months after the election, by the State of Louisiana, on the relation of John C. Moncure, against

Antoine Dubuclet, contesting his election, claiming that relator, Moncure, received at said election a greater number of votes than Dubuclet, and that the returning officers acted *illegally* and *fraudulently* in returning Dubuclet elected.

On the 2d of April, 1877, Dubuclet, defendant, filed a petition in said suit for the removal of the case to the Circuit Court of the United States at its next term, on grounds, as set out in the petition on pages 5 to 7 of the printed record.

The facts stated in this petition for removal were sworn to by Dubuclet, defendant, p. 7.

The 6th District Court ordered this case, on the foregoing petition, to be removed to the Circuit Court of the United States, pp. 7 to 9.

On the 18th December, 1877, exceptions to the removal of this case from the State Court to the Circuit Court of the United States were filed in the Circuit Court of the United States, p. 10 of the printed record.

I.

POINTS PRESENTED BY THE PLEADING.

The allegations in the pleadings show that both parties to this suit are citizens of Louisiana; hence, no claim is set up for removal based on citizenship.

The allegations in relator's petition do not show any ground for removal, but plaintiff in error, in his petition for removal, sets up and swears to the ground he assigns

for removal, which if sufficient *in fact* and *in law*, entitles him to the removal. Gold-Washing Company vs. Keyes, 6 Otto, 199; Insurance Company vs. Pahner, 5 Otto, 183.

The *main point* presented by the several exceptions to the petition for removal, is, that the State of Louisiana has passed *no law* in *conflict* with the constitutional amendments, or the Act of Congress, known as the civil rights bill, guaranteeing to citizens of color the right to vote, or any law depriving them of the right to vote on account of race color or previous condition of servitude.

No such charge is made in the petition for removal, but it is charged in the petition that *relator*, *Moncure*, and those acting in his interest, did deprive more than 5,000 citizens of color of the right to vote at said election by means of *bribery*, *threats of depriving them of employment and occupation*, *and of ejecting them from rented houses*, *lands and other property* and *by threats of* not *renewing leases* or *contracts* for *labor*, and by *threats* of *violence* to them and *their families*, in violation of their and your petitioner's civil rights and in violation of the laws of the United States, made and enacted to protect the civil rights of citizens of color and previous condition of servitude.

II.

CASE REMOVABLE UNDER ACT OF 1875.

Since the late decisions in the cases of Virginia vs. Reeves, 10 Otto, 313, and Strauder vs. W. Virginia, id.

303, construing §641 U. S. Rev. Stat., as authorizing a removal under that section only in cases where the *State law* was in violation of the Constitution or Acts of Congress guaranteeing equal civil rights to persons of color, and not in cases of acts of individuals by which such persons are prevented from exercising such rights, we abandon the right of removal claimed in this case under §641 U. S. Rev. Stat.

But this does not prevent us from claiming the removal in this case under the 2d section of the Act of Congress of March 3, 1875, p. 470.

This case is actually in the Circuit Court of the United States, so that if it could have been removed there from the State Court under the provisions of said act, it should be retained there, it would be doing a vain thing to send this case back to the State Court to compel plaintiff in error to make a new application for removal under the Act of 1875.

Can this case be removed from the State Court according to the provisions of the Act of 1875?

§5507 of the U. S. Rev. Statutes provides that: "Every person who prevents, hinders, controls, or intimidates another from exercising or in exercising the right of suffrage, *to whom that right is guaranteed by the fifteenth amendment to the Constitution of the United States*, by means of bribery, or threats of depriving such persons of employment or occupation, or of ejecting such

persons from rented houses, lands or other property, or by threats of refusing to renew leases or contracts for labor, or by threats of violence to himself or family, shall be punished as provided in the preceding section."

This statute was passed to protect the rights guaranteed by the 15th amendment, as is *expressly stated* in the §5507 itself. This statute expressly applies to "*every person*" as contradistinguished from "*state action*," who shall deprive any person of the right guaranteed by the 15th amendment, for the reasons stated in this section.

Plaintiff in error, in his petition for removal, expressly brings his case within this statute; he expressly avers in his petition, that:

"At the election held in this State on the 2d day of November, A. D. 1874, for State Treasurer, at which petitioner was a candidate, that in the Parishes of *De Soto*, *Bienville*, *Union*, *Grant*, and *other Parishes* of the State, there were more than *five thousand citizens* of color of the State of La. and of the United States qualified by law to vote at said election, and who offered to vote, and if they had been permitted to vote, would have voted for petitioner, and against Jno. C. Moncure, relator, and who were prevented, hindered, controlled and intimidated from voting for petitioner by relator Moncure, and those acting in his interest, by means of bribery, threats of depriving them of employment and occupation, and of ejecting them from rented houses, lands and other property, and by threats of refusing to renew leases or

contracts for labor, and by threats of violence to them or their families, in violation of their and your petitioner's civil rights, and in violation of the laws of the United States made and enacted to protect the civil rights of citizens of color and previous condition of servitude." Pp. 5, 6.

Petitioner further avers, p. 6:

"That the contest in said suit No. 9250 turns and depends entirely on the question of the right of the relator, Moncure, and those acting in his interest, to prevent petitioner's supporters from voting for him, in violation of the laws of the United States, and in violation of the equal civil rights of petitioner and his supporters."

These allegations bring the petitioner for removal clearly within U. S. Rev. Stat. §2010.

Then the acts charged in the petition for removal against relator, Moncure, are acts done in violation of the penal act of Congress above cited, and relator, Moncure, by this suit is endeavoring to enforce in the State courts, and to use the authority of the State for that purpose, as this proceeding is in the name and by the authority of the State, to obtain the office of State Treasurer through means of his illegal conduct and in violation of the penal laws of the United States.

The grounds for removal involve matters arising under the Constitution and laws of the United States alone; no

other question is raised; the sole question touching the title arises out of the "denial of the right to vote to citizens who were entitled to vote and who so offered to vote, on account of race, color or previous condition of servitude."

It is provided by §2, of Act of Congress of March 3, 1875, p. 470:

"That any suit of a civil nature, at law or in equity, now pending or hereafter brought in any State court, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and arising under the *Constitution or laws of the United States*," etc., "either party may remove said suit into the Circuit Court of the United States for the proper District."

Is there any doubt but that the acts charged in the petition for removal against defendant in error, are in violation of said section 5507 of the U. S. Rev. Stat.? There cannot be, inasmuch as the very acts, *totidem verbis*, made penal by that section, are charged against defendant in error in the petition, and are sworn to by petitioner.

Then if the section of law above referred to, §5507, is constitutional, there is an end to the controversy, as the acts of defendant in error were clearly violative of this law.

The §2010 of the U. S. Rev. Stat. seems to be intended to cover just such a case as the one before the court. It provides that, "whenever any person is

defeated or *deprived of his election* to any office, * * by reason of the denial to any citizen, who may offer to vote, of the right to vote, on account of race, color or previous condition of servitude, when *such denial* is the *sole question* touching the title to such office, such suit or proceeding may be instituted in the Circuit or District Court of the United States," etc. This certainly gives jurisdiction to the United States Courts in such cases.

The case now before the court is just such a one. Relator attempts to deprive plaintiff in error of his office. Plaintiff in error has a right to use as a *shield for his protection*, any *means* he could use for an attack. Now, if plaintiff in error had not been returned elected, but had been *defeated* or *deprived* of his election, by the means stated in his petition for removal, he would under this statute, §2010, have had a right to have brought a suit in the United States Court to establish his right to the office on the same grounds set up in his petition for removal, when the sole question touching the title to such office arises out of the denial of the right to vote to citizens who so offered to vote, on account of race, color or previous condition of servitude.

But the defendant in error says that the United States Courts only have jurisdiction when the deprivation of the right to vote is by *virtue of a State law to that effect, that acts of force or fraud* perpetrated by *individuals* by which colored persons are deprived of

their right to vote, do not bring the case within the jurisdiction of the United States Courts.

This position depends on the question as to whether the right of a colored citizen to vote, is one conferred or protected by the Constitution or laws of the United States. If so, then the United States Courts have jurisdiction, for the reason that whatever law of the United States is violated by a citizen gives jurisdiction to the United States Courts for redress. See §1 of Chap. 137, Acts of March 3, 1875, p. 470. The suit now before the Court is one arising under the Constitution and laws of the United States, and if such suit is brought in a State Court it may be removed into the United States Court. §2 of same act.

That the right of colored citizens to vote, if not actually conferred by the Constitution of the United States, is clearly protected and guaranteed by the 15th amendment thereto, and by United States Revised Statutes, §§5507 to 5532, penalties are prescribed for a violation of this right by individuals, and the acts complained of by plaintiff in error in this case are made penal, and it is only on this ground that this right is guaranteed by the laws of the United States that the right to punish its violation can be exercised by the United States Courts.

It then seems clear that the violation of "any right *secured* to a person by any law providing for the equal civil rights of citizens of the United States, when per-

petrated by an individual, subjects that individual to the penalties provided in §§5507 to 5532," and gives the United States Courts jurisdiction of the case as between individuals of the same State; and if the suit involving such violations should be brought in a State Court, the defendant in such suit may, if the other conditions occur, remove such case into the United States Circuit Court.

III.

ASSIGNMENT OF ERRORS.

Plaintiff in error charges that the Court below erred in remanding this case to the State Court for the reasons:

1st. That the sole question touching the title to the office in controversy in this case arises out of the denial of the right to vote to citizens who offered to vote, on account of race, color or previous condition of servitude. U. S. Rev. Stat., §2010.

2d. That in such case as above described, the person defeated or deprived of his election may institute suit in the Circuit or District Court of the United States, and if he is attempted to be deprived of his office, he may, if the suit is instituted in a State Court, have such suit removed to the United States Court, and use as a defence any cause he might use in prosecution of his rights to an office. U. S. Rev. Stat., §2010.

3d. That any suit which may be legally instituted in

a United States Court, if brought in a State Court, if the amount is sufficient, may be removed from the State Court into the Circuit Court of the United States.

4th. That the acts of relator, Moncure, alleged in the petition for removal, are in violation of the §5507 of the U. S. Rev. Stat.

5th. That under §2 of Acts of Congress of March 3, 1875, p. 470, this case is removable from the State Court to the Circuit Court of the United States, as the whole defence rests on a violation of a United States law by the relator.

JOHN RAY,

Of Counsel for Plaintiff in Error.

IN THE

SUPREME COURT

OF THE UNITED STATES.

October Term, 1880. No. 226.

ANTOINE DUBUCLET, *Plaintiff in Error,*

against

THE STATE OF LOUISIANA *ex rel.*
JOHN C. MONCURE, *Defendant in Error.*

FROM CIRCUIT COURT OF UNITED STATES FOR DISTRICT OF LOUISIANA.

Brief for Defendant in Error.

In 1877, on March 20, in the Sixth District Court for the parish of Orleans, in the State of Louisiana, was filed "The petition of the State of Louisiana, represented by H. N. Ogden, attorney general of said State, upon the information of John C. Moncure, a resident of the city of Shreveport, in the parish of Caddo, joined with said State as plaintiff;" which petition is in the record, p. 1 to 4.

On April 2 was filed "Answer and petition to remove case to U. S. Circuit Court." *Id.*, p. 5 to 7.

April 9 "it is ordered that the case be transferred to

the Circuit Court of the United States for the fifth circuit and district of Louisiana,"—and that the relator show cause on the 17th "why this rule should not be made absolute." *Id.*, p. 7. The rule was continued to a day in May; in this month it was made absolute, and, accordingly the case was removed to the United States Circuit Court; the counsel representing relator, J. C. Moncure, "reserving all rights of proper objection before said U. S. Circuit Court." *Id.*, pp. 8. 9.

December 18, was filed exceptions to the jurisdiction of the U. S. Circuit Court; wherein it is prayed "that these exceptions be sustained, and that this suit be ordered to be transferred to the Sixth District Court for the parish of Orleans, State of Louisiana." *Id.*, p. 10.

December 22, "after hearing argument, the court took time to advise."

1878, Jan. 2, "it is ordered" (by *Billings*, J.) "that the application be granted, and the cause remanded to the State court." *Id.*, p. 11.

To this order was awarded the writ of error in the present case. *Id.*, p. 11.

Points and Authorities.

"The facts upon which the jurisdiction of the courts of the United States rests, must, in some form, appear in the record of all suits prosecuted before them. To this rule there is no exception." *Ex parte Smith*, 4 Otto, (91 U. S.,) 455.

The right of removal is statutory. Before a party can avail himself of it, he must show before the court that his is a case which comes within the provisions of the statute. His petition for removal "should state facts which, taken in connection with such as already appear, entitle him to the transfer." *Ins. Co.* vs. *Pechner*, 5 Otto, (95 U. S.,) 183; *Amory* vs. *Amory*, *Id.*, 186.

The Circuit Court of the U. S. was not required to retain this cause under its jurisdiction, unless it did in some form appear upon the record by a statement of facts 'in legal and logical form,' such as is required in good pleading, (1 Chit. Pl., 213,) that the suit is one which 'really and substantially involves a dispute or controversy' as to a right which depends upon the construction or effect of the Constitution or some law or treaty of the United States." *Gold Washing & Water Co.* vs. *Keyes*, 6 Otto, (96 U. S.,) pp. 203, 204.

In the present case, so far from its so appearing to the Circuit Court, it did "appear to the satisfaction of said Circuit Court" that the suit "does *not* really and substantially involve a dispute or controversy properly within the jurisdiction of said Circuit Court." Therefore the Circuit Court did proceed no further therein; but did "remand it to the court from which it was removed," and in so remanding it, did right. Removal Cases, 10 Otto, (100 U. S.,) 457; *Ayers* vs. *Chicago*, 11 Otto, (101 U. S.)

The order of the Circuit Court remanding the cause is in accordance not only with the decision of *Bradley* and *Duval*, J.'s, in *The State of Texas* vs. *Gaines*, 2 Woods' C. C. R., and of *Billings*, J., in *Johnson* vs. *Jumel*, 3 *Id.*, 69, but also with the decision of this court in *Virginia* vs. *Rives*, 10 Otto, (100 U. S.,) 313; and, therefore, should be affirmed.

CONWAY ROBINSON,
Counsel for Defendant in Error.

January 6, 1881.

UNITED STATES SUPREME COURT.

October Term, 1880. No. 226.

ANTOINE DUBUCLET, *Plaintiff in Error*,

vs.

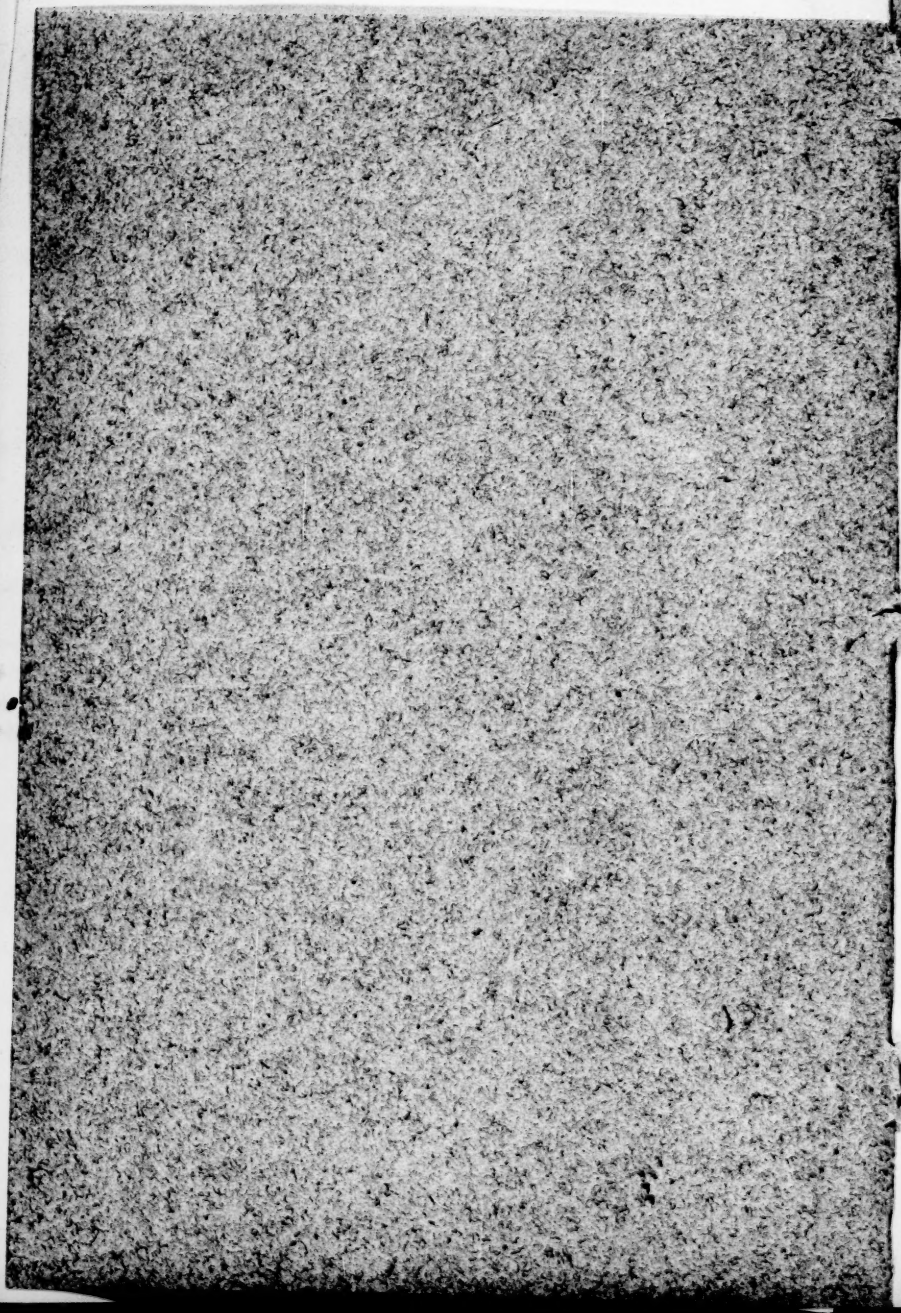
THE STATE OF LOUISIANA, EX REL. JOHN C. MONCURE.

FROM CIRCUIT COURT OF UNITED STATES FOR DISTRICT OF LOUISIANA.

Additional Brief for Defendant in Error.

CONWAY ROBINSON,
Counsel for defendant in error.

February 26, 1881.



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it was thought

When this cause was liable to be called, although no brief was filed for plaintiff in error, one was filed for defendant in error. Since then a brief has been filed for plaintiff in error, wherein it is said (pp. 3, 4):

> "Since the late decisions in the cases of *Virginia* v. *Rives*, 10 Otto, 313, and *Strauder* v. *West Virginia*, Id., 303, construing § 641, U. S. Revised Statutes, as authorizing a removal, under that section, only in cases where the State law was in violation of the constitution or acts of Congress, guaranteeing equal rights to persons of color, and not in cases of acts of individuals, by which such persons are prevented from exercising such rights, *we abandon the right of removal claimed in this case* under § 641, U. S. Rev. Stat."

Thus is abandoned the ground taken in the court below, and on which Bermudez, J., made his decision—for his opinion (as published in a newspaper) concluded thus:

Billings

"There is no doubt but that the defendant here intended by his affidavit to admit that the laws and methods of proceeding in the courts of Louisiana were without any discrimination on the ground of race, for the laws and the constitution made them available to all races alike. If there be any discrimination from other sources than the system of laws, or the methods by which they are put in operation, it would not be a ground for removal under the law of Congress. Let the case be remanded."

But the counsel for plaintiff in error says:

"This does not prevent us from claiming the removal in this case, under the 2d section of the act of Congress of March 3, 1875."

This is said in a case wherein the petition of the State of Louisiana, represented by H. N. Ogden, Attorney General of said State, upon the information of John C. Moncure, a resident of the city of Shreveport, in the parish of Caddo, joined with said State as plaintiff (p. 1 to 4), states the case thus:

"Petitioners aver that, in pursuance of the duly published proclamation of the governor of the State of Louisiana, an election was held in the State of Louisiana on the 2d day of November, 1874, whereat the plaintiff, Jno. C. Moncure, and the defendant, Antoine Dubuclet, were candidates for the said office, and that the said election was conducted in accordance with law, and at the close of the polls on the evening of said day the ballots deposited by the suffragans of the State showed, on actual count by the commissioners of election according to law, that Jno. C. Moncure had received for the office of State treasurer seventy-four thousand eight hundred and ninety-seven votes, and Antoine Dubuclet had received for the office of State treasurer seventy-one thousand and twenty-one votes, by which count it appeared that Jno. C. Moncure had received a majority of three thousand eight hundred and seventy-six of the legal votes, and was thereby duly elected treasurer of the State of Louisiana; that the various commissioners of election thereupon made out and certified their respective statements showing the results at the various polls, according to law, which, aggregated, showed the aforesaid general result, and forwarded the same to the different supervisors and assistant supervisors of registration, in order that they might be compiled by wards and parishes, according to law; and they, in turn, compiled the same and forwarded the parish and ward returns, with a few exceptions hereinafter spec-

ially set forth, to the returning-board, composed of J. Madison Wells, Thos. C. Anderson, Louis M. Kenner, G. Casanave, and whereof J. Madison Wells was president, constituted under the laws of the State, to be by them compiled for the State at large; whereupon said board did assemble at New Orleans on November 11th, 1874, and proceed to canvass and compile the same. That the supervisor of the parish of De Soto did fraudulently, and for the purpose of defeating the will of the majority of the voters of said parish, as expressed at said election, fail to forward the statements of the commissioners of the various polls of said parish, together with the compilation thereof; and the plaintiff herein, Jno. C. Moncure, did, through his attorneys, cause the district clerk of said parish to appear before said returning board with the duplicate original of said statements provided for by law, whereby it was shown that said plaintiff, Jno. C. Moncure, did receive one thousand and forty-three majority of said votes; but said returning board refused to, and in fact did not, count said majority for said petitioner, although said, plaintiff's attorneys did frequently protest against said action and urged plaintiff's rights in the matter; that the supervisor of the parish of Terrebonne did fail to compile and forward the returns of poll three, eight, ten, and eleven of said parish, because the statements of votes and tally sheets of said polls were by the commissioners of said polls deposited, by reason of error, in the ballot-boxes, which were lodged with the clerk of the district court of said parish; and that plaintiff's attorneys did procure an order of court whereby said returns were forwarded and received by said returning board, whereby it appeared, together with the polls already returned, that the votes stood sixteen hundred and seven for Antoine Dubuclet, and thirteen hundred and sixty-one for Jno. C. Moncure, but that said returning board refused, in violation of law, to count the said returns from said polls, whereby Jno. C. Moncure (plaintiff) was improperly deprived on said count of thirty-one votes in said parish to which he was entitled by law; that in the parish of Carroll, although plaintiff's attorneys conclusively showed that the returns before said board were forged and altered, and nowise showed the correct statement of votes cast in said parish, and should have been rejected in toto, said board did proceed to count and promulgate the same, whereby twenty-two hundred and two votes were counted for Antoine Dubuclet and two hundred and thirty-four were counted for Jno. C. Moncure, whereas the whole vote should have been rejected; that in the parish of Bienville, De Soto, Grant and Winn, said returning board, contrary to law, refused to count any returns at all from said parishes, altho' in possession of the same, and in the promulgation of the result in the State omitted therefrom the returns from

said parishes, which last showed in the aggregate of the four parishes twenty-eight hundred and forty-seven votes for Jno. C. Moncure, and six hundred and sixty-seven votes for Antoine Dubuclet, by which illegal action plaintiff, Jno. C. Moncure, was improperly deprived of twenty-one hundred and eighty majority, to which he was entitled, and which should have been counted for him; that said returning board did, on various frivolous pretexts, reject the returns from the following polls of various parishes, which showed the following results:

Assumption, poll 4: Thrown out 158 for Moncure; 51 for Dubuclet.

Caddo, poll 1, 2, 3, 4, 5, 11, 12, 13: 944 for Moncure, 227 for Dubuclet.

Jackson, poll 4: 273 for Moncure; 52 for Dubuclet.

Lincoln, polls 3, 4 & 7: 345 votes for Moncure, and 25 votes for Dubuclet.

Natchitoches, polls 5 & 6: 295 votes for Moncure, and 3 votes for Dubuclet.

Rapides, six polls: 557 votes for Moncure, and 89 votes for Dubuclet.

Red River, poll 3: 119 votes for Moncure, and 43 votes for Dubuclet.

Sabine, poll 3: 79 votes for Moncure, and none for Dubuclet.

Iberia, poll 1: 308 votes for Moncure, and 154 for Dubuclet.

St. Tammany, poll 3: 40 votes for Moncure, and nothing for Dubuclet.

Total amount of votes thrown out: Moncure 3,118; Dubuclet 644.

That at the Evergreen poll, in parish of Avoyelles, when the ballot-box was stolen, and there was only a partial return, showing Dubuclet's majority to be 8 votes, said returning board arbitrarily returned said Dubuclet's majority to be one hundred and fifty, whereby said Jno. C. Moncure was improperly damaged to the amount of one hundred and forty votes; that all of the said illegal and improper action of said board, plaintiff, Jno. C. Moncure, through his attorneys, repeatedly protested verbally and in writing, but to no effect; that the result of the improper and illegal action of said returning board in altering and rejecting the returns from said polls and parishes aforesaid was to deprive plaintiff, Jno. C. Moncure, of twenty-four hundred and forty-six majority, which should have been counted for said Jno. C. Moncure.

Petitioner further alleges that said returning board in their said action pretended to be acting under the authority of the provisions of act No. , but that said board acted illegally and improperly, and in direct contradiction of said law in receiving and entertaining objections and protests not entered according to the provisions of said acts; that

in entertaining and acting on said protests and objections said returning board proceeded in violation of law both in the order, in which they pretended to investigate said protests, and in the manner in which they conducted the examination: and finally that in the whole of said proceedings, said returning board exercised and pretended to exercise judicial powers under the provisions of said act, and in violation of art. of the constitution of the State of Louisiana, which provides that no judicial power shall be vested or exercised by bodies or persons, other than the courts; that the result of said illegal, arbitrary, and unconstitutional action of said returning board was that they falsely returned and promulgated said Antoine Dubuclet as having received nine hundred and fifty-eight majority of legal votes of the suffragans of the State of Louisiana for the office of treasurer of the State when the fact was and is that the plaintiff, Jno. C. Moncure, did receive three thousand eight hundred and seventy-six majority of said votes, and was and is now entitled to be declared, promulgated commissioned, and inducted into office on qualifying according to law as the treasurer of the State.

This plain statement of facts, which Dubuclet had an opportunity of answering (if he could have answered the same), remains unanswered; he *abandons* "*the right of removal claimed in this case under* § 641 *U. S. Rev. Stat.;*" and yet it is argued that a court of the United States should not "send this case back to the State court!"

The present is a suit arising under the constitution or laws of the State of Louisiana; and is not a suit "arising under the constitution or laws of the United States." It is such a suit as no man who, in 1787, desired the adoption of the Constitution of the United States, would have suggested should go before a court of the United States.

"For the consequence would have been universally seen to be a prostration of the dignity, and, with that, the usefulness, of the State tribunals. *The Constitution would never have been adopted by any one State, under such a construction.*" 14 Mass., 420.

"It is a part of the history of the day that the great Revolution which established the Constitution of the United States was not effected without immense opposition. Serious fears were extensively entertained that those powers which the patriot statesmen—who then watched over the interests of our country—deemed essential to union,

and to the attainment of those invaluable objects for which union was sought, might be exercised in a manner dangerous to liberty. In almost every convention by which the constitution was adopted, amendments to guard against the abuse of power were recommended. These amendments demanded security against the apprehended encroachments of the general Government—not against those of the local governments." 7 Peters, 250.

In 1833, when MARSHALL, C. J., used this language, he said:

"Each State established a constitution for itself, and in that constitution provided such limitations and restrictions on the powers of its particular government as its judgment dictated. The people of the United States framed such a government for the United States as they supposed best adapted to their situation and best calculated to promote their interests." 7 Peters, 247.

In the same spirit is the language of this court at Dec. T., 1868, *Lane Co.* v. *Oregon*, 7 Wallace, 76; at Dec. T., 1869, *Veazie Bank* v. *Fenno*., 8 Id., 541; and at Dec. T., 1870. Then, in its opinion delivered by NELSON, J., it was said:

"It is a familiar rule of construction of the Constitution of the Union that the sovereign powers vested in the State governments, by their respective constitutions, remained unaltered and unimpaired, except so far as they were granted to the Government of the United States.—The Government of the United States, therefore, can claim no powers which are not granted to it by the Constitution; and the powers actually granted would be such as are expressly given, or given by necessary implication. The General Government and the States, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former, in its appropriate sphere, is supreme; but the States—within the limits of their powers not granted, or, in the language of the tenth amendment, "reserved"—are as independent of the General Government as that Government, within its sphere, is independent of the States." 11 Wallace, 124.

"Such being the separate and independent condition of the States (in our complex system, as recognized by the Constitution), and the existence of which is so indispensable that without them the General Government itself would disappear from the family of nations, it would seem to follow, as a reasonable if not a necessary consequence,

that the means and instrumentalities employed for carrying on the operations of their governments, for preserving their existence, and fulfilling the high and responsible duties assigned to them in the Constitution, should be left free and unimpaired—should not be liable to be crippled, much less defeated, by the taxing power of another government;" "and, more especially, those means and instrumentalities which are the creation of their sovereign and reserved rights"—Id., 125, 126—one of which, it may now be added, is the power to have a treasury and a treasurer. "Without this power" (in substance), "and the exercise of it, we risk nothing in saying that no one of the States, under the form of government guaranteed by the Constitution, could long preserve its existence." "All of the thirteen States were in the possession of this power, and had exercised it at the adoption of the Censtitution." It is "one of the sovereign powers vested in the States by their constitutions which remained unaltered and unimpaired, and in respect to which the State is as independent of the general Government as that Government is independent of the States." Id., p. 126.

At Dec. T., 1870, the question was, "whether the power 'to lay and collect taxes' enables the general Government to tax the salary of a judicial officer of the State, which officer is a means or instrumentality employed to carry into execution one of its most important functions—the administration of the laws—and which concerns the exercise of a right reserved to the States?" Id., p. 126.

It was held that this "is an original inherent power never parted with, and in respect to which the supremacy of that Government does not exist, and is of no importance in determining the question; and, farther, that being an original and reserved power, and the judicial officers appointed under it being a means or instrumentality employed to carry it into effect, the right and necessity of its unimpaired exercise, and the exemption of the officer from taxation by the general Government, stand upon" solid ground. *The Collector* v. *Day*, 11 Wallace, 126, 127.

So upon the question in the present case, the right and necessity in New York, Pennsylvania, Ohio, Louisiana, and every other State in the Union, to have and maintain a treasury of the State—to have its treasurer elected according to the constitution and laws of the State—and in a suit

arising thereunder (as to the person elected treasurer) to have this question determined by the judicial department of the State—"stand upon as solid ground, and are maintained by principles and reasons as cogent as"—and, indeed, even more cogent than—those which led, in the *Collector* v. *Day*, to the exemption of the judicial officer of a State from taxation by the general Government. The country now is unhappily deprived—and in the future may be deprived—of services by that respected judge, Mr. Justice *Hunt*; but it has the benefit of his clear and distinct language, in delivering the opinion of the court at Dec. T., 1872:

> "The right of the States to administer their own affairs, through their legislative, executive and judicial departments, in their own manner, through their own agencies, is conceded by the uniform decisions of this court; and by the practice of the Federal government from its organization. This carries with it an exemption of those agencies and instruments from the taxing power of the Federal government. It they may be taxed lightly, they may be taxed heavily; if justly, oppressively. Their operation may be impeded and may be destroyed, if any interference is permitted. Hence the beginning of such taxation is not allowed on the one side—is not claimed on the other." *United States* v. *Railroad Co.*, 17 Wallace, 327, 328.

It being thus conceded that New York, Pennsylvania, Ohio, Louisiana, and all other States in the Union, have a right "to administer their own affairs, through their legislative, executive and judicial departments, in their own manner, through their own agencies," and that their operation is not to be destroyed or impeded by the Federal government, the present case cannot lawfully be affected by the fifteenth amendment to the Constitution of the United States.

The Revised Statutes contain such legislation as Congress deemed appropriate under that amendment, to wit, section 5507, section 2010 and section 641. A removal of such a case as the present from a court of the State to a circuit court of the United States is not authorized by these sec-

tions or by any other section of the Revised Statutes; and it is unnecessary and would be improper to construe loose language in the act of March 3, 1875 (18 Stat., p. 470), as intended to authorize the removal of such a case as the present to a circuit court of the United States. Although for this act there cannot be the excuse which was suggested for the statute of March 3, 1815, § 6 (3 Stat., p. 233), that it was passed *flagrante bello*," yet it may be said of this act of 1875, as was said of the statute of March 3, 1815, by the Supreme Court of Massachusetts, in 1817—

that it was passed "without a due consideration of the independence of the State courts and the national judicial power, as established by the Constitution of the United States." *Wethorbee* v. *Johnson, &c.*, 14 Mass., 419.

The State, as to the subject-matter in the present case, having a "prerogative, right, title or interest," the statute of 1875 may well be construed as not intended to divest the State thereof. *U. S.* v. *Herron*, 20 Wallace, 225. Upon this and other grounds, the judgment of the court below may properly be affirmed, without giving to this act such a construction as would require the court to decide whether Congress had authority by the Constitution to enact it.

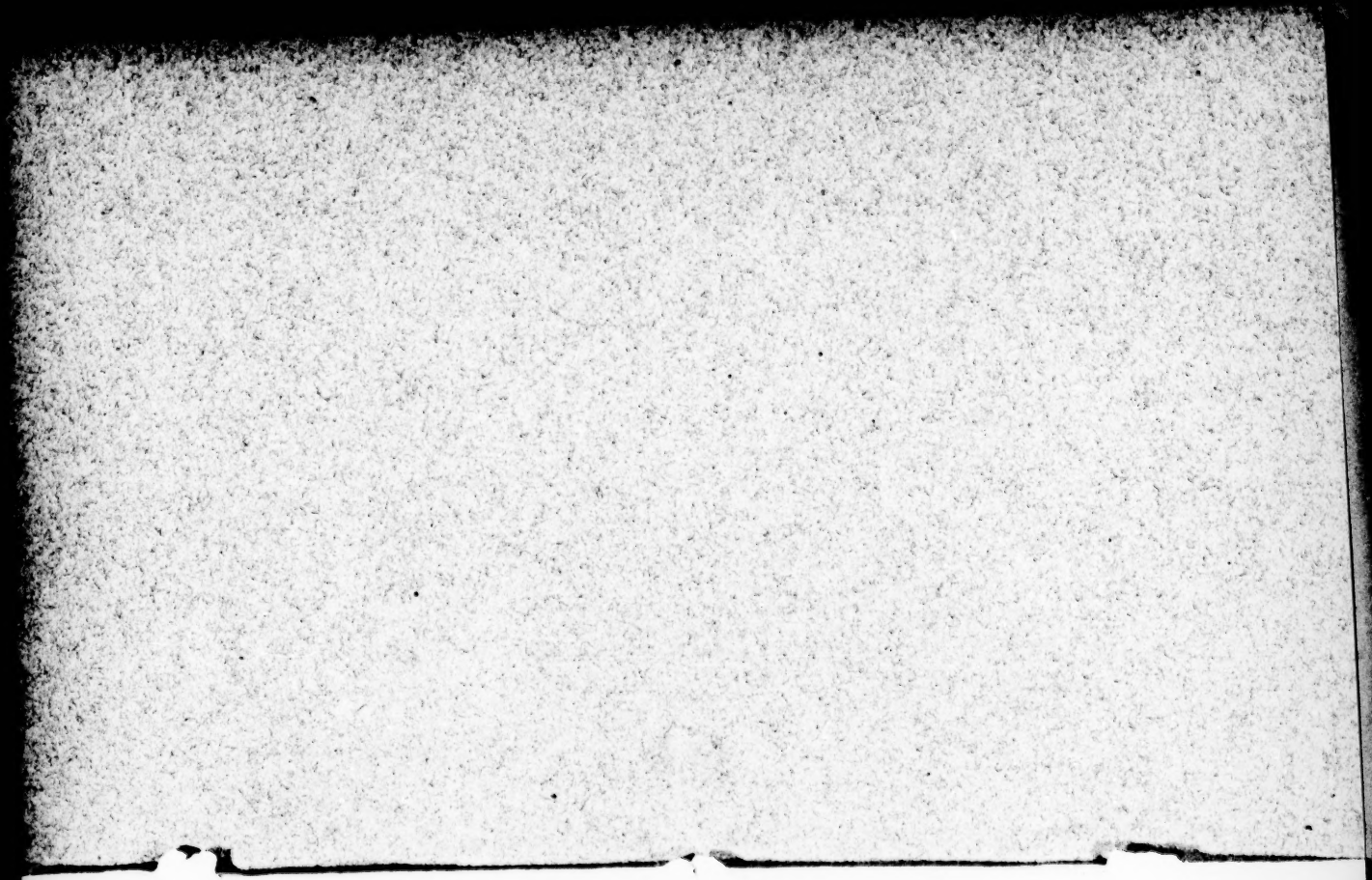
But if it should be found necessary to pass on this constitutional question, then it should be considered that nothing "can justify a judicial tribunal in executing an act which is not authorized by the Constitution." 14 Mass., 421.

The power under the 15th amendment as to its subject-matter may be regarded as like the power in art. 1, section 8, of the Constitution; under which Congress has power by clause 1 "to lay and collect taxes, &c.," and by clause 17, "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof." Notwithstanding this broad language, "the means and in-

strumentalities employed by the States to carry into operation their reserved powers are "necessarily and for the sake of self-preservation exempt from" Federal taxation; their "unimpaired existence" being essential.

"The exemption rests upon necessary implication, and is upheld by the great law of self-preservation; as any government, whose means employed in conducting its operations, if subject to the control of another and distinct government, can exist only at the mercy of that government." Of what avail are these means, if another power may tax them at discretion? *Collector* v. *Day*, 11 Wallace, 127.

The like question may be asked as to those means, if another power may, at its discretion, interfere therewith in other ways than taxation. Of what avail is the "right of the States to administer their own affairs, through their legislative, executive and judicial departments, in their own manner, through their own agencies," if those agencies may be changed, and their operation destroyed or impeded by the interference of another power? In this case, as to the office of treasurer of the State of Louisiana, it could not be truly alleged in the words of section 2010 of the Revised Statutes "that *the sole question* touching the title to such office arises out of the denial of the right to vote to citizens who" "offered to vote, on account of race, colour, or previous condition of servitude:" but even if it could have been, and had been, so alleged, the case should not have been removed to a circuit court of the United States, but the trial of whatever matters were in issue should have been by the State court wherein the case was instituted. In every aspect, the order remanding the cause to the State court is right and should be affirmed.

CONWAY ROBINSON,
Counsel for defendant in error.

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